



November 16, 1999

Mr. Brian L. Reade  
Attorney at Law  
2170 Buckthorne Place, Suite 215  
The Woodlands, Texas 77380

OR99-3254

Dear Mr. Reade:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130760.

The Woodlands Community Association, Inc. (the "association"), a property owner association which you represent<sup>1</sup>, received a request for the name of the "person or persons" who have complained about alleged deed restriction violations at a certain address. You have provided for our review information that is responsive to the request. You assert that some of the requested information is excepted from public disclosure under the "informer's privilege" as incorporated by section 552.101 of the Government Code. You have marked those portions of the materials that you believe are protected.

The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having

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<sup>1</sup>You acknowledge the association is a governmental body for purposes of chapter 552 of the Government Code. Act of May 13, 1999, 76<sup>th</sup> Leg., R.S., ch. 1084, § 2, 1999 Vernon's Sess. Law Serv. 3945, 3945 (property owner association is subject to the Public Information Act in the same manner as a governmental body if it meets the enumerated criteria as set out by the section). We do not address your arguments as to the constitutionality of that provision which causes the association to be subject to the Public Information Act. The Open Records Division is not the appropriate party to rule on the constitutionality of section 552.0035 of the Government Code.

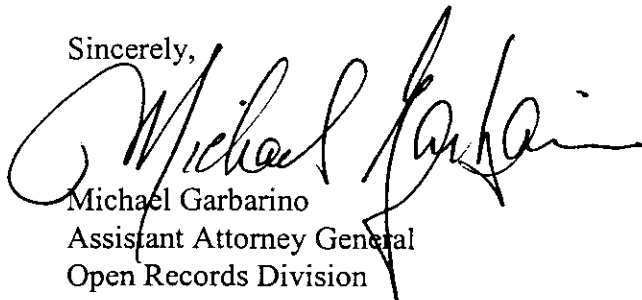
a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988).

In this instance, you explain that the complaints at issue involve alleged violations of real property deed restrictions. You state that the association is authorized to enforce the restrictions, and that violations are subject to civil penalties pursuant to section 202.004 of the Property Code. With respect to each specific complaint, you do not indicate whether the requestor already knows the identity of the informant. We assume from our review of the request that, in each instance, the subject of the complaint does not already know the identity of the informer. After reviewing your arguments and the submitted documents, we agree that you have demonstrated the applicability of the informer’s privilege to the requested information.

The informer’s privilege excepts the informer’s statement itself only to the extent necessary to protect the informer’s identity. Open Records Decision No. 549 at 5 (1990). On three of the four pages submitted for our review, you have marked for redaction the names, street addresses, and where applicable, the telephone number of the informer. We agree that marked information is excepted from disclosure under the informer’s privilege, since any portion of that information could lead one to readily identify the informer. On one remaining page dated “8/15/95,” you have marked for redaction only the name of the informer, and the address about which the informer complained. As that address does not tend to identify the informer, we believe that address is public information. That same page contains a telephone number which we assume is the telephone number of the informer. Such information would lead one to readily identify the informer. The telephone number, which we have marked, may thus also be redacted.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/ch

Ref: ID# 130760

Encl. Submitted documents

cc: Mr. Gary Zin  
40 Silver Elm Place  
The Woodlands, Texas 77381  
(w/o enclosures)